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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JONI RYNN DAVIS,

Defendant and Appellant.

C090131

(Super. Ct. No. 18FE010545)

After defendant Joni Rynn Davis pleaded no contest to filing a false document, the trial court granted her five years' probation. Among the terms of her probation was an electronics search condition, which required her to submit to warrantless searches of any electronic storage devices. On appeal, defendant challenges the validity of the electronics search condition, contending it is unreasonable under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*) because it is not reasonably related to future criminal conduct. We agree. Accordingly, we direct the trial court to issue an amended probation order striking the electronics search condition and affirm the judgment as modified.

## BACKGROUND

Defendant recorded a grant deed that conveyed a piece of residential property from the victims to herself. She then attempted to sell the property to a third party. The prosecution charged her with two counts of filing a false document (Pen. Code, § 115, subd. (a)), and she pleaded no contest to one count in exchange for the dismissal of the other count. At the change of plea hearing, the parties stipulated to the factual basis of the plea: “With respect to Count 2 alleged in the Complaint on March 5th, 2018, in the County of Sacramento, Joni Booth<sup>1</sup> filed a Grant Deed with the Sacramento County Clerk Recorder’s Office. [¶] This Grand [sic] Deed was fraudulent in that she listed herself as a CEO of a company called SS&A Silver Linings. . . . Ms. Booth was not the CEO of Silver Linings. . . . She used that Grant Deed to -- she fraudulently issued that Grant Deed to herself as CEO to herself personally granting the property to herself, and that’s it.”

At the sentencing hearing, defense counsel asked the trial court not to impose an electronics search condition as a term of defendant’s probation. The prosecution responded that “the public documents, or the documents that she filed, were quite sophisticated, actually, would require some internet usage to pull those documents down, changing the articles of incorporation for a company -- [¶] . . . [¶] -- and filing a grant deed.” Defendant replied that she “didn’t do that.” The court placed defendant on probation for five years, and included an electronics search condition as a term of that probation.

The condition read as follows: “P.C. 1546 searchable - Defendant shall submit his/her person, place, property, automobile, electronic storage devices, and any object under his/her control, including but not limited to cell phone and computers, to search

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<sup>1</sup> Defendant married and changed her last name.

and seizure by any law enforcement officer or probation officer, any time of the day or night, with or without a warrant, with or without his/her presence or further consent.

“Defendant being advised of his/her constitutional and statutory rights pursuant to Penal Code section 1546 et seq. in this regard, and having accepted probation, is deemed to have waived same and also specifically consented to searches of his/her electronic storage devices.

“Defendant shall provide access to any electronic storage devices and data contained therein, including disclosing and providing any and all [information] necessary to conduct a search.”

### DISCUSSION

Defendant contends the electronics search condition imposed in this case is invalid under *Lent, supra*, 15 Cal.3d 481, because the condition is not related to the current offense, the conduct to which the condition relates is not, in itself, criminal, and the condition is not reasonably related to future criminal conduct. We agree.

We review conditions of probation for abuse of discretion. (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*).) “A condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .’ [Citation.]” (*Lent, supra*, 15 Cal.3d at p. 486.) “The *Lent* test ‘is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term.’ (*Olguin, supra*, 45 Cal.4th at p. 379.)” (*In re Ricardo P.* (2019) 7 Cal.5th 1113, 1118 (*Ricardo P.*).) Accordingly, even if the probation condition is unrelated to the crime defendant was convicted of and relates to conduct not itself criminal, “the condition is valid as long as the condition is reasonably related to preventing future criminality. [Citation.]” (*Olguin*, at p. 380.)

Recently, the California Supreme Court clarified the parameters of the *Lent* test’s third prong, whether the condition “ ‘requires or forbids conduct which is not

reasonably related to future criminality.” ’ [Citation.]” (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1119.) In *Ricardo P.*, the minor was placed on probation after admitting to two counts of burglary. The juvenile court imposed drug conditions because the minor had indicated he had previously smoked marijuana, and imposed a condition requiring the minor “submit to warrantless searches of his electronic devices, including any electronic accounts that could be accessed through these devices.” (*Id.* at p. 1115.) Nothing in the record indicated the minor had ever used electronic devices to commit, plan, discuss or consider criminal conduct. Nonetheless, the juvenile court imposed the electronics search condition based on its own “observation that teenagers ‘typically’ brag about such drug use on social media.” (*Id.* at p. 1119.) Although the Supreme Court was skeptical about the generalization of teenagers’ tendency to brag about drug use on social media, the Supreme Court found that even accepting that premise as true, *Lent*’s third prong was not satisfied by an abstract or hypothetical relationship between the probation condition and preventing future criminality. (*Id.* at pp. 1119-1120.)

The Court of Appeal in *Ricardo P.* had upheld the electronics search condition under *Olguin*, *supra*, 45 Cal.4th 375, as reasonably related to the supervision of the juvenile on probation. (*Ricardo P.*, *supra*, 7 Cal.5th at pp. 1124-1125.) Despite some broad language in *Olguin*, the Supreme Court rejected an interpretation of *Olguin* that probation conditions reasonably related to enhancing supervision of probationers are valid under *Lent*. (*Id.* at pp. 1125-1127.) Instead, the court limited *Olguin* to its facts. The probation condition at issue there required the defendant to notify the probation officer about any pets at his residence. (*Id.* at p. 1124.) The pet notification condition was reasonable because it served to inform and protect the probation officer in his supervision and this protection was reasonably related to the purpose of deterring future criminality. (*Id.* at p. 1126.) By contrast, the electronics search condition was “far more burdensome and intrusive, and requires a correspondingly substantial and particularized justification.” (*Ibid.*)

Our high court held the electronics search condition “satisfies *Lent*’s third prong and is therefore invalid under the *Lent* test because, on the record before us, the burden it imposes on Ricardo’s privacy is substantially disproportionate to the countervailing interests of furthering his rehabilitation and protecting society.” (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1119.)

As in *Ricardo P.*, only the third prong of the *Lent* test is at issue here. The factual basis for the plea indicates only that defendant filed a false document with a county office in an attempt to take control of a piece of property. Nothing in the record indicates defendant used an electronic device in committing the offense, or had any history of using electronic devices to commit, facilitate or plan criminal conduct, or of using social media to demonstrate she had committed such conduct. The prosecutor speculated that the sophistication of the crime may have required internet usage, but offered no evidence to support imposition of the condition. The trial court’s conclusion that the condition was necessary for proper supervision does not satisfy the requirements of *Lent*, any more than the juvenile court’s generalized statements about teenagers posting their drug use on social media did in *Ricardo P.*

The People argue that a more narrowly drawn search condition could survive scrutiny and urge us to tailor, rather than strike, the electronics search condition. As explained above, however, no facts in the record support the imposition of an electronics search condition, and we see no reason why a different electronics search condition would remedy this absence of facts.<sup>2</sup>

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<sup>2</sup> We note that nothing in this opinion prevents the trial court from exercising its discretion, following a noticed hearing, to modify the terms of probation if presented with additional facts that would tie an electronics device search condition to defendant’s future criminality that complies with the holding in *Ricardo P.* (See Pen. Code, § 1203.3, subds. (a), (b).)

This case falls squarely within the concerns articulated in *Ricardo P.*: “If we were to find this record sufficient to sustain the probation condition at issue, it is difficult to conceive of any case in which a comparable condition could not be imposed, especially given the constant and pervasive use of electronic devices and social media . . . today. In virtually every case, one could hypothesize that monitoring a probationer’s electronic devices and social media might deter or prevent future criminal conduct. . . . [Citation.] Indeed, whatever crime a [probationer] might have committed, it could be said that [probationers] may use electronic devices and social media to mention or brag about their illicit activities.” (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1123.) Accordingly, we find this condition is not reasonably related to future criminality and is therefore invalid under *Lent*. (*Lent*, *supra*, 15 Cal.3d at p. 486.)

#### DISPOSITION

The trial court is directed to issue an amended probation order striking the electronics search condition. As modified, the judgment is affirmed.

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/s/  
RAYE, P. J.

We concur:

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/s/  
BLEASE, J.

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/s/  
MAURO, J.